

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)
	)
Jean J. Suh,	)
d/b/a Radio Hankook	) File Number: EB-01-ST-091
Licensee of Station KSUH AM	) NAL/Acct. No. 200232980001
Puyallup, Washington	) FRN 0006-1414-02
Licensee of Station KWYZ AM,	
Everett, Washington	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Released: August 28, 2002

By the District Director, Seattle Office, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Jean J. Suh, d/b/a Radio Hankook ("Suh"), licensee of station KSUH(AM) in Puyallup, Washington and station KWYZ(AM) in Everett Washington, has apparently willfully violated Sections 11.35(a), 11.61, 17.4(g) and 17.50 of the Federal Communications Commission's ("FCC") Rules by failing to have operational Emergency Alert System ("EAS") equipment, failing to conduct required weekly and monthly EAS tests, failing to post the Antenna Structure Registration ("ASR") number in a conspicuous location so that it is visible near the base of the antenna structure, and failing to clean or repaint an antenna structure as often as necessary to maintain good visibility.<sup>1</sup> We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>2</sup> that Suh is apparently liable for a forfeiture in the amount of twenty two thousand dollars (\$22,000).

**II. BACKGROUND**

2. On March 16, 2001, the Seattle Office received an anonymous report of alleged violations of FCC Rules at station KSUH(AM). Agents from the Seattle District Office attempted to conduct an inspection of the station on March 29, 2001. No ASR number was posted at the base of the KSUH tower and the paint on the structure was peeling and faded. Due to language barriers with KSUH staff, the agents postponed the inspection of the studio. On April 27, 2001, the agents again attempted an inspection of the studio. The station was in the process of moving its studio at that time. The agents advised the station owner regarding EAS requirements and provided the owner a copy of the AM

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<sup>1</sup> 47 C.F.R §§11.35, 11.61, 17.4(g), and 17.50.

<sup>2</sup> 47 U.C.S. § 503(b).

Broadcast Station Self-Inspection checklist, but did not attempt a further inspection of the studio on April 27, 2001.

3. On May 3, 2001, agents from the Seattle District Office inspected the transmitter site of station KWYZ. No ASR number was posted at the base of the KWYZ tower.

4. On November 30, 2001, Seattle Agents re-inspected both transmitter towers for stations KSUH and KWYZ. No ASR was posted at the base of either tower. The paint on the KSUH tower was still peeling and faded. The sidelights on the KWYZ tower were not operational.

5. Also on November 30, 2001, the Seattle agents inspected the new co-located KSUH/KWYZ studio. EAS equipment was installed at the studio, but the EAS equipment was not functionally operable. The equipment was set in the manual mode, requiring operator interface to conduct any EAS test. The operator on duty at the time of the inspection was unable to perform a required weekly test of the EAS equipment. No tape used to record EAS tests was installed in the EAS equipment, and no logs existed of any EAS monthly or weekly tests having been received or retransmitted at any time during the past year.

6. On January 22, 2002, the Seattle District Office issued an Official Notice of Violation ("NOV") to Suh regarding the stations' violations of the FCC Rules requiring operational EAS equipment and EAS tests, ASR posting, tower lighting and painting, annual equipment performance measurements, a designated chief operator, station logs, and specified information in the station public inspection file. Suh stated in her March 12, 2002 reply to the NOV that the EAS equipment was rewired to facilitate automatic rebroadcast of received EAS tests and broadcasts, a log has been established, the ASR numbers have been posted at the towers, that samples to monitor the lights on the KSUH tower have been added and the bulbs on the KWYZ tower are being replaced. Suh also stated in her March 12, 2002 reply that an estimate had been obtained for painting the KSUH tower, but made no commitment to paint the tower. Rather, Suh stated that "Radio Hankook does not own the antenna structure and is trying to get help to relieve some of the financial impact this has caused so the painting can be done in as timely a manner as possible."

7. The ASR for the KSUH tower, ASR # 1033592, lists Jean J. Suh d/b/a Radio Hankook as the owner. An administrative update, Application A0222778, filed November 21, 2002, also lists Jean J. Suh d/b/a Radio Hankook as the structure's owner and Jean J. Suh, sole proprietor as the authorized party for the structure.

### III. DISCUSSION

8. Section 503(b) of the Act provides that any person who willfully fails to comply substantially with the terms and conditions of any license, or willfully fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.<sup>3</sup> The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>4</sup>

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<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ...." *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

9. The Rules provide that every AM and FM broadcast station is part of the nationwide EAS network and is categorized as a participating national EAS source unless the station affirmatively requests authority to not participate.<sup>5</sup> The EAS provides the President and state and local governments with the capability to provide immediate and emergency communications and information to the general public.<sup>6</sup> State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from sources such as the National Weather Service or local emergency management officials.<sup>7</sup>

10. Section 11.35 of the Rules requires all broadcast stations to ensure that EAS encoders, EAS decoders and attention signal generating and receiving equipment is installed and operational so that the monitoring and transmitting functions are available during the times the station is in operation. Section 11.61 of the Rules requires AM stations to (a) receive monthly EAS tests from designated local primary EAS sources and retransmit the monthly test within 60 minutes of its receipt and (b) conduct tests of the EAS header and EOM codes at least once a week at random days and times.<sup>8</sup> The requirement that stations monitor, receive and retransmit the required EAS tests ensures the operational integrity of the EAS system in the event of an actual disaster. Based on the evidence before us, we find that Suh willfully violated Sections 11.35 and 11.61 of the Rules by failing to have functionally operable EAS equipment installed at stations KSUH and KWTZ and by failing to transmit the required monthly and weekly EAS tests.

11. The FCC's antenna structure registration posting, marking and lighting requirements operate in concert with FAA regulations to ensure that antenna structures do not present hazards to air navigation. Section 17.4(g) of the Rules requires that the ASR number be posted in a conspicuous location so that it is readily visible near the base of the antenna structure. The posting requirement allows easy contact with the structure owner if problems arise. Section 17.50 of the Rules requires that painted antenna structures shall be cleaned or repainted as often as necessary to maintain good visibility. Based on the evidence before us, we find that Suh violated Sections 17.4(g) and 17.50 of the Rules by failing to post the ASR numbers at the antenna structures for both station KSUH and station KWTZ, and failing to maintain good visibility of the KSUH antenna structure.

12. The base forfeiture amount set by *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement")<sup>9</sup>, and Section 1.80(b)(4) of the Rules,<sup>10</sup> for EAS equipment not installed or operational is \$8,000,

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<sup>5</sup> 47 C.F.R. §§ 11.11 and 11.41.

<sup>6</sup> 47 C.F.R. §§ 11.1 and 11.21.

<sup>7</sup> 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local and relay EAS sources.

<sup>8</sup> The required monthly and weekly tests are required to conform to the procedures in the EAS Operational Handbook. *See also, Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, EB Docket No. 01-66, *Report and Order*, FCC 02-64 (Feb. 26, 2002); 67 Fed Reg 18502 (April 16, 2002) (effective May 16, 2002, the required monthly EAS test must be retransmitted within 60 minutes of receipt.).

<sup>9</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>10</sup> 47 C.F.R. § 1.80.

and for failure to comply with prescribed antenna structure lighting or marking (painting) is \$10,000. The *Forfeiture Policy Statement* does not establish a base forfeiture amount for failure to post the antenna structure registration number. The Commission has determined, however, that an appropriate base forfeiture amount for failure to post the ASR number is two thousand dollars (\$2,000) per violation.<sup>11</sup> Accordingly, the total base forfeiture for failing to have operational EAS equipment, failure to maintain good visibility of the antenna structure for station KSUH and failure to post the ASR numbers at both station antenna structures is \$22,000.

13. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act<sup>12</sup>, which includes the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, a \$22,000 forfeiture is warranted.

#### IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Jean J. Suh d/b/a Radio Hankook, is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty two thousand dollars (\$22,000) for violations of Sections 11.35, 17.4(g), and 17.50 of the Rules.<sup>13</sup>

15. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Jean J. Suh SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

16. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200232980001 and FRN 0006-1414-02.

17. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20402 and MUST INCLUDE THE NAL/Acct. No. 200232980001.

18. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial

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<sup>11</sup> See *American Tower Corporation*, 16 FCC Rcd 1282 (2001).

<sup>12</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>13</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 0111, 0.311, 1.80, 11.35, 17.4(g) and 17.50.

documentation submitted.

19. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>14</sup>

20. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail # 7001 2510 0007 6500 1001, Return Receipt Requested, to Jean J. Suh, d/b/a Radio Hankook, 807 South 336th Street, Federal Way, Washington 98030.

FEDERAL COMMUNICATIONS COMMISSION

Dennis Anderson  
District Director, Seattle Office

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<sup>14</sup> See 47 C.F.R. § 1.1914.